

173703

C. DUKES SCOTT  
EXECUTIVE DIRECTOR

DAN E ARNETT  
CHIEF OF STAFF

P.O. Box 11263  
Columbia, S.C. 29211

Phone: (803) 737-0800  
Fax: (803) 737-0801



REC-173703  
2005 APR 22 PM 4:35  
SC PUBLIC SERVICE COMMISSION

April 22, 2005

Mr. Charles L.A. Terreni  
Chief Clerk/Administrator  
**South Carolina Public Service Commission**  
101 Executive Center Dr., Suite 100  
Columbia, SC 29210

Re: Petition of the Office of Regulatory Staff to Request Forfeiture of the Bond and to Request Authority to Petition the Circuit Court for Appointment of a Receiver.

PSC Docket No.: 2005-110 wls

Enclosed for filing please find the original and twelve (12) copies of the Petition of the Office of Regulatory Staff to Request Forfeiture of the Bond and to Request Authority to Petition the Circuit Court for Appointment of a Receiver. We will hand deliver a date-stamped copy to Piney Grove Utilities, Inc.'s Registered Agent for Service of Process in Columbia. We will provide a certificate of service to this effect following service.

Please let me know if you have any questions.

Sincerely,

Benjamin P. Mustian

BPM/rmg

Enclosures

cc: D. Reece Williams, IV, President  
Louis Lang, Esquire  
Jessica J.O. King, Esquire

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION**  
**OF SOUTH CAROLINA**

**DOCKET NO.** 2005-110 w/s

APRIL 22, 2005

2005 APR 22 PM 12:13  
COMM. ROOM  
[Signature]

IN RE: Petition of the Office of Regulatory )  
Staff to Request Forfeiture )  
of the Piney Grove Utilities, Inc. )  
Bond And to Request Authority )  
To Petition the Circuit Court for )  
Appointment of a Receiver )


**CERTIFICATE OF SERVICE**

This is to certify that I, Cindy Clary, an employee with the Office of Regulatory Staff, have this date served one (1) copy of the **PETITION OF THE OFFICE OF REGULATORY STAFF TO REQUEST FORFEITURE OF THE BOND AND TO REQUEST AUTHORITY TO PETITION THE CIRCUIT COURT FOR APPOINTMENT OF A RECEIVER** in the above-referenced matter to the person(s) named below by causing said copy to be deposited in the United States Postal Service, first class postage prepaid and affixed thereto, and addressed as shown below:

Jessica J.O. King, Esquire  
**DHEC**  
2600 Bull Street  
Columbia, SC 29201

Louis Lang, Esquire  
**Callison, Tighe & Robinson, LLC**  
1812 Lincoln Street, Suite 200  
Columbia, SC 29202-1390

D. Reece Williams, IV, President  
**Piney Grove Utilities, Inc.**  
49 Archdale Street  
Charleston, SC 29401

  
Cindy Clary

April 22, 2005  
Columbia, South Carolina

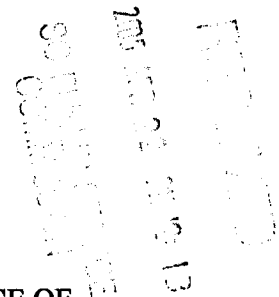
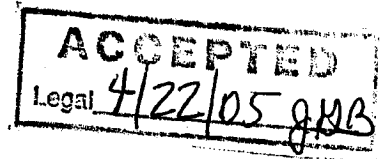
BEFORE

THE PUBLIC SERVICE COMMISSION

OF SOUTH CAROLINA

DOCKET NO. \_\_\_\_\_

APRIL 22, 2005



IN RE: Petition of the Office of Regulatory	)	PETITION OF THE OFFICE OF
Staff to Request Forfeiture	)	REGULATORY STAFF TO REQUEST
of the Piney Grove Utilities, Inc.	)	FORFEITURE OF THE BOND
Bond And to Request Authority	)	AND TO REQUEST AUTHORITY TO
To Petition the Circuit Court for	)	PETITION THE CIRCUIT COURT FOR
Appointment of a Receiver	)	APPOINTMENT OF A RECEIVER

The Office of Regulatory Staff, by filing this petition, would respectfully show and request of the Commission:

1. That the Public Service Commission of South Carolina ("the Commission") is a state agency constituted pursuant to the laws of the State of South Carolina with its business offices located in Columbia, South Carolina; that the Commission is responsible for the regulation of wastewater utilities operating for compensation as set forth in S.C. Code Ann. §58-5-10 et seq. (2004 Supp.).

2. That the Office of Regulatory Staff ("ORS") is charged with the duty to "represent the public interest of South Carolina before the Commission" pursuant to S.C. Code Ann. Section 58-4-10, et seq. as enacted by 2004 Acts 175.

3. That D. Reece Williams, IV is the owner and Louis H. Lang is the registered agent for service of process for Piney Grove Utilities, Inc. ("Piney Grove"), 1812 Lincoln Street,

Columbia, South Carolina 29201. See Exhibit A, Order No. 2001-761 issued in Docket No. 2000-588-W (August 20, 2001). See also Exhibit B, Secretary of State Webpage.

4. That Piney Grove is currently operating as a “public utility” as defined in S.C. Code Ann. §58-5-10(3) (2004 Supp.) in that it is incorporated for the purpose of providing sewerage collection and sewerage disposal to the public or any portion thereof, for compensation; that Piney Grove provides sewer service to customers in the Lloydwood and Franklin Park Subdivisions in Lexington and Richland Counties. See Exhibit C, Invoice from Piney Grove Utilities, Inc. See also Exhibit D, Order No. 92-29 issued in Docket No. 90-807-W/S (January 24, 1992).

5. That Piney Grove is subject to the jurisdiction of this Commission pursuant to S.C. Code Ann. §58-5-210 et seq. (2004 Supp.); that Piney Grove has previously submitted itself to the jurisdiction of the Commission by filing an application for approval of rates and charges for water and sewer service provided to its customers in Commission Docket No. 90-807-W/S; that in Docket No. 2000-588-W, Mr. Williams petitioned the Commission to merge the stocks of Eagle Point Water Company, Inc. in Clarendon County, Tickton Hall Water Company in Jasper County and Piney Grove into Piedmont Water Company, Inc. (“Piedmont”) thereby submitting to and acknowledging the jurisdiction of the Commission; further, that the Commission established a \$125,000 sewer bond for Piedmont which is secured by a personal financial statement filed by Mr. Williams. See Exhibit A. See also Exhibit E, Mr. D. Reece Williams Personal Financial Statement.

6. That the Department of Health and Environmental Control (“DHEC”) issued an NPDES permit SC0031402, effective May 1, 1994, authorizing Piney Grove to discharge treated

wastewater into an unnamed tributary to Dry Branch Creek<sup>1</sup>, in accordance with the effluent limitations, monitoring requirements and other conditions; that Piney Grove entered into Consent Order of Dismissal, No. 04-007-W, with DHEC whereby Piney Grove agreed to properly operate and maintain its wastewater treatment facility ("WWTF") and its wastewater collection system ("WWCS") in accordance with state and federal regulations; that DHEC found that malfunctions of the WWCS resulted in the reported overflows of sewage onto the ground and into the storm drainage system; that DHEC found that the nature and amount of spillage of wastewater over the past two years has created a nuisance and health hazard for residents of Lloydwood subdivision, the adjacent property, and for children who may come into contact with such waste through play in and about the area; further, that DHEC found that flow of wastewater on and about the Lloydwood subdivision, the receiving stream and into the storm drainage system represents an immediate threat to the health and welfare of the residents of both the Lloydwood subdivision and the adjacent subdivisions and to occupants therein. See Exhibit F, DHEC Emergency Order 05-040-W issued April 14, 2005.

7. That, under the consent order with DHEC, Piney Grove agreed to interconnect with another system and to have such other system take over operations of the wastewater treatment facility; that on April 16, 2004, Piney Grove filed an application with the PSC requesting approval of a contract with the City of Cayce to provide bulk collection service; that this application has not been approved and is not set for hearing before the Commission until June 30, 2005. See Exhibit G, Notice of Hearing, Commission Docket No. 2004-112-S

8. That as of March 1, 2005, Piney Grove is operating the facility without a S.C. Certified operator of the appropriate grade, as required by the NPDES permit; did not have a

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<sup>1</sup> Upon information and belief, ORS believes the unnamed tributary flows into Dry Branch Creek. However, DHEC's emergency order issued April 14, 2005, indicates the tributary discharges into "Dry Creek."

S.C. approved laboratory to analyze all permitted requirements; and, had not submitted its monthly monitoring discharge reports for December 2004, January 2005, and February 2005; further, that there is no chlorine at the facility which is required for the disinfection of the WWTF's effluent. See Exhibit F.

9. That as evidenced by the DHEC Consent Order and DHEC Emergency Order, Piney Grove has failed to comply with the laws of the state of South Carolina; that, as a result of its failure to comply with the laws of the state of South Carolina, Piney Grove Utilities is currently not providing adequate and proper service as required by S.C. Code Ann. §58-5-10 et seq. (2004 Supp.). See Exhibit F. See also Exhibit H, DHEC Consent Order 04-007-W, dated March 26, 2004.

10. That, although the matter of this petition has just come to the attention of ORS, Mr. Williams has been non-responsive when ORS has attempted to contact him and resolve other matters concerning utilities under his control.

11. That "the Public Service Commission shall have the right to require any person or corporation, as defined in Section 58-5-10, operating a water or sewer utility system for which prior consent or approval by the commission is required to appear before the commission on proper notice and show cause why that utility should not be required to take steps as are necessary to provide adequate and proper service to its customers. If the commission upon hearing determines that the service is not being provided, it shall issue an order requiring the utility to take steps as are necessary to the provision of the service within a reasonable time as prescribed by the commission. Upon failure of the utility to provide the service within the time prescribed without cause or excuse, as shall be determined by the commission, the commission shall impose a penalty or fine against the utility in an amount not less than one hundred dollars

per day but not more than one thousand dollars per day. Each day the failure or noncompliance continues shall be considered a separate and distinct breach or violation of the order. Any fine or penalty so imposed or assessed by the commission, upon proper filing in the appropriate county office or offices, constitutes a lien upon the properties and assets of the utility in like manner and form as any other judgment at law. Any fine or penalty so imposed by the commission shall go into the general fund of the State, unless otherwise provided by law.” S.C. Code Ann. §58-5-710 (2004 Supp.).

12. That “if the Commission shall, after notice and hearing, determine that a utility subject to the regulations of the Commission has willfully failed to provide adequate and sufficient service for an unreasonable length of time and that it is likely to continue such failure to the detriment of the public served by the utility, or if the Commission shall determine after notice and hearing, that adequate and sufficient service is not being provided by such utility and that such utility is unable to provide such service for any reason the Commission shall have the right to petition the court of common pleas for the county wherein the utility shall have its principal office or place of business for the appointment of a receiver to assume possession of the facilities and system and to operate such utility upon such terms and conditions as the court shall prescribe.” S.C. Code Ann. §58-5-730 (1976).

13. That “the commission has the right, upon notice and hearing, to declare all or any part of the bond or certificate of deposit forfeited upon a determination by the commission that the utility failed to provide service without just cause or excuse and that this failure has continued for an unreasonable length of time.” S.C. Code Ann. §58-5-720 (2004 Supp.).



14. That certain witnesses which ORS expects and intends to present at an evidentiary hearing are members of the general public; that it would be an undue hardship on these public witnesses to be required to prefile testimony.

**WHEREFORE**, ORS prays that the Honorable Commission:

1. Issue an Order requiring Piney Grove to show why it should not be required to take immediate steps to provide adequate and proper service to its customers;
2. Set a hearing for this matter as soon as is practicable;
3. Find that Piney Grove has failed to provide adequate and proper service and that this failure has continued for an unreasonable length of time;
4. Pursuant to S.C. Code Ann. §58-5-710, impose and assess appropriate penalties against Piney Grove;
5. Declare the entire bond on file with the Commission for Piney Grove forfeited;
6. Allow ORS to petition the Circuit Court for appointment of a receiver under S.C. Code Ann. §58-5-730;
7. Waive Commission rules requiring the prefiling of testimony for certain witnesses who are members of the general public and who will be called to testify by ORS;
8. For other appropriate action which the Commission may deem necessary.



Benjamin P. Mustian, Esquire  
C. Lessie Hammonds, Esquire  
**Office of Regulatory Staff**  
P.O. Box 11263  
Columbia, South Carolina 29211

April 22, 2005  
Columbia, South Carolina

**EXHIBIT A**

**BEFORE**

**THE PUBLIC SERVICE COMMISSION OF**

**SOUTH CAROLINA**

**DOCKET NO. 2000-588-W - ORDER NO. 2001-761**

**AUGUST 20, 2001**

IN RE:	Application of Piedmont Water Co., Inc. for	)	ORDER APPROVING
	Approval to Consolidate Eagle Point Water	)	CONSOLIDATION
	Co., Inc. and Piney Grove Utilities, Inc.	)	

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Application of Piedmont Water Company, Inc. (Piedmont or the Company) requesting approval to consolidate the stock of Eagle Point Water Co., Inc. (Eagle Point) in Clarendon County, Piney Grove Utilities, Inc. (Piney Grove) (known as C.W. Haynes Co., Inc.) in Richland and Lexington Counties, and Tickton Hall Water Co. (Tickton Hall) in Jasper County into Piedmont.

The Commission's Executive Director directed the Company to publish a Notice of Filing one time in newspapers of general circulation in the areas affected by the Application. Further, the Company was directed to notify each affected customer in writing. The Company furnished affidavits to show compliance with the instructions of the Executive Director. No Protests were filed. Petitions to Intervene were received from the South Carolina Department of Health and Environmental Control (DHEC) and the Consumer Advocate for the State of South Carolina (the Consumer Advocate).

Accordingly, a hearing was held on June 28, 2001 at 10:30 AM in the offices of the Commission, with the Honorable William Saunders, Chairman, presiding. The

Company was represented by Louis Lang, Esquire. DHEC was represented by Mason Summers, Esquire. The Consumer Advocate was represented by Charles Knight, Esquire. The Commission Staff (the Staff) was represented by F. David Butler, General Counsel. The Company presented the direct and rebuttal testimony of D. Reece Williams, IV. DHEC presented the testimony of Lewis Nelson Roberts, Jr. (Although DHEC prefiled the testimony of Anastasia Hunter Shaw, it did not present her testimony during the hearing.) The Consumer Advocate presented no witnesses. The Staff presented the testimony of William O. Richardson.

D. Reece Williams, IV, President of Piedmont Water Company, Inc. testified. Williams stated that he is either the sole shareholder or the sole shareholder of a corporation which owns the stock in Eagle Point, Piney Grove, and Tickton Hall, and that he wishes to merge all of the stock of these companies into Piedmont. Williams stated that such a merger will allow him to simplify the corporate record keeping and reporting required of these corporations by various regulatory and supervisory agencies. In addition, in his view, the consolidation would make more efficient the day to day administrative operation of these corporations, and would allow for a more accurate and efficient accounting of the various income and expenses of these entities. In addition, Williams noted that the consolidation would also allow a facilitated review of any rate applications involving these companies, and would provide increased access to credit facilities to allow them to upgrade their facilities as necessary.

Williams noted that the consolidation would be "seamless" to the customers of the various entities, and that they would continue to deal with the same people that they have

always dealt with before in regard to the provision of water and sewer service. Williams further stated that upkeep and management of the various facilities would be enhanced by the merger.

Lewis Nelson Roberts, Jr., manager of the Drinking Water Enforcement Section of the Water Enforcement Division of DHEC testified. Roberts expressed DHEC's concerns about the proposed merger of the corporations because of some compliance problems that the Department has experienced with Mr. Williams. Various enforcement actions have been taken against some of the systems owned by Williams, for which Mr. Williams is responsible, according to Roberts, even though some of the actions were taken prior to Williams's ownership. Roberts expressed DHEC's opinion that merger of the various companies should not be allowed until Piedmont demonstrates that it possesses adequate capital and the managerial commitment to maintain and operate both the existing systems and those of the other corporations.

According to Roberts, DHEC believes that inadequate capital and lack of managerial commitment may be to blame for some of the problems at the facilities of the companies. Some of the problems include, but are not limited to a leaning water tank, occasional low water pressure, improperly stored chemicals, valve maintenance, lack of a flushing plan, inadequate record keeping, and lack of security. These systems receive "unsatisfactory" or "needs improvement" ratings as a result of sanitary surveys conducted by DHEC Staff. Roberts also noted that there was an outstanding \$20,000 fine due and payable to DHEC as the result of an enforcement action against Piney Grove Utilities,

Inc. In addition, Roberts notes an unresolved enforcement action against the Eagle Point water system.

William O. Richardson testified for the Commission Staff, and indicated that there was no evidence to indicate that there would be a negative impact to any customers resulting from the proposal before the Commission.

Williams presented rebuttal testimony to the DHEC testimony. Williams stated a belief that quality of service and the ability of the companies to comply with the regulations of both the Commission and DHEC would be enhanced by the proposed consolidation, as well as the operation of the companies.

We have examined the entire record of this case, including the testimony and exhibits, and have concluded that the Application to consolidate the stock of Eagle Point and Piney Grove with Piedmont should be approved, under certain conditions to be named *infra*. We believe that the consolidation should enhance quality of service, operation, and regulatory compliance. We do have some concerns about the fact that we are missing annual reports from some of the companies, and that there has never been an establishment case for the Tickton Hall water system. We are also concerned about the apparent non-compliance of certain of the systems with DHEC regulations. We will address these concerns hereinafter, and establish certain conditions that must be met by Piedmont in consideration of our approval of the consolidation.

First, within fifteen (15) days after receipt of this Order, Piedmont shall file with this Commission annual reports for Eagle Point and Piney Grove. Second, within thirty

(30) days after receipt of this Order, Piedmont shall file an establishment case for establishment of rates and charges for the Tickton Hall water system.

Third, the sewer bond currently on file with the Commission for Piedmont shall be increased to \$125,000 to reflect the additional annual expense associated with the sewer utilities under Piedmont, as shown by the evidence in the case. This new bond shall be filed as soon as possible after receipt of the Order by the Company. The water bond currently on file for \$100,000 shall remain unchanged.

Fourth, all water and sewer systems under Piedmont must become compliant with all applicable and pertinent DHEC regulations. This Commission hereby adopts the current schedule of compliance set forth by DHEC as fully as if repeated herein verbatim, with the exception of the repayment of any current past due fines owed to DHEC by the consolidated Piedmont Water Company, which we do not herein address.

Fifth, excluding the currently pending cases involving River Pines and Tickton Hall, Piedmont shall not be allowed to either acquire or operate any additional water or sewer utilities without first obtaining and maintaining compliance with DHEC rules for the utilities associated with the newly approved, consolidated Piedmont Water Company, again, with the exception of any current past due fines owed to DHEC.

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

\_\_\_\_\_  
Chairman

ATTEST:

\_\_\_\_\_  
Executive Director

(SEAL)



# Secretary of State Search

## Mark Hammond's Office



Office of the South Carolina Secretary of State

Business Filings Division

Information for: PINEY GROVE UTILITIES, INC.

Check Charities Database

Note\*\*\* This online database was last updated on 04/22/2005 see our Disclaimer

DOMESTIC / FOREIGN:

Domestic

STATUS:

Good Standing

STATE OF INCORPORATION /

SC

ORGANIZATION:

For Profit

### REGISTERED AGENT INFORMATION

REGISTERED AGENT NAME:

LOUIS H LANG  
1812 LINCOLN ST, STE 200

ADDRESS:

CITY: COLUMBIA

STATE:

SC

ZIP:

29201 0000

SECOND ADDRESS:

FILE DATE:

06/17/1965

EFFECTIVE DATE:

06/17/1965

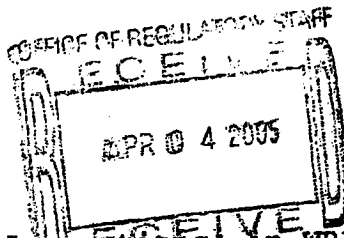
DISSOLVED DATE:

CORPORATION HISTORY RECORDS			
Code	File Date	Comment	Document



Agent	07/11/2000	CHIADD FR W E SELLARS	FILM
INCORPORATION (DOMESTIC)	08/17/1965	ART	FILM

[Return to Previous Page](#)



# Piney Grove Utilities

Lloydwood  
P. O. Box 3096  
West Columbia, SC 29171

EXHIBIT C

Send ALL questions, in WRITING, to above address

DENNIS J KNIGHT  
104 LLOYDWOOD DRIVE  
WEST COLUMBIA SC 29172

Customer Number
2351-LL
Period Ending
03-31-2005
Page Number
1
Telephone
See Note Above

To Ensure Proper Credit, Write Your Customer Number on Check or Money Order

Date	Description	Amount			
	Service Location: 104 LLOYDWOOD DRIVE				
	Previous Balance	60.00			
03-08-05	Late Fee for February, 2005	5.00			
03-31-05	Sewer Fee for March, 2005	15.00			
	PAST DUE AMOUNT = \$60.00				
	February 2005	20.00			
	January 2005	20.00			
	December 2004	15.00			
	November 2004 AND before	5.00			
 <b>DISCONNECTION OF SERVICE NOTICE</b> Your account is past due. Please remit payment in full or provide a <u>WRITTEN EXPLANATION</u> in the space below.  This MUST be postmarked on or before April 8, 2005 to avoid disconnection of your service AND a reconnection charge of \$50.00. If you mailed your payment within the last 3 business days, please disregard this notice.  *** There will be no reconnections after 5:00 PM. *** *** Reconnections will be made the following WORK day. ***					
		Pay This Amount			
Current	Over 30 Days	Over 60 Days	Over 90 Days	Sec Deposit	
20.00	20.00	20.00	20.00	Zero	80.00

Piney Grove Utilities  
Lloydwood  
P. O. Box 3096  
West Columbia, SC 29171

Customer Number: 2351-LL  
Service Location: 104 LLOYDWOOD DRIVE

Amount Due: \$80.00

Sewer Deposit Contract

March 31, 2005

We are providing you with Sewer Service.

For this service I agree to pay such rates as established by the provider. I also agree to conform to all the rates, rules and regulations as now or hereafter in force, and which are made part of this contract. The current deposit required for your location is \$90.00.

Your Signature: \_\_\_\_\_

Please remit the \$90.00 plus the balance due on the enclosed statement by the due date (on the statement).

Mailing Address:

DENNIS J KNIGHT

104 LLOYDWOOD DRIVE

WEST COLUMBIA SC 29172

Home Phone: 803 796-8877

Work Phone:

Make any Corrections Required:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**EXHIBIT D**

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 90-807-W/S - ORDER NO. 92-29

JANUARY 24, 1992

IN RE: Application of Piney Grove Utilities,     )  
      Inc. for Approval of a New Schedule of    ) ORDER APPROVING  
      Rates and Charges for Water and Sewer    ) RATES AND CHARGES  
Service Provided to its Customers in     )  
      Lexington and Richland Counties,         )  
      South Carolina.                             )

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of an Application filed by Piney Grove Utilities, Inc. (the Company or Piney Grove) on July 25, 1991, for an increase in its rates and charges for water and sewer service provided to its customers in Lexington and Richland Counties, South Carolina. The Application was filed pursuant to S.C. Code Ann. §58-5-240 (Supp. 1991) and 26 S.C. Regs. 103-821 (1976).

By letter dated August 12, 1991, the Commission's Executive Director instructed the Company to publish a prepared Notice of Filing, one time, in a newspaper of general circulation in the area affected by the Company's Application. The Notice of Filing indicated the nature of the Company's Application and advised all interested parties of the manner and time in which to file appropriate pleadings. Additionally, the Company was instructed to directly notify all of its customers affected by the proposed increase. The Company submitted affidavits indicating that it had complied with these instructions.

A Petition to Intervene was filed on behalf of Steven W. Hamm, the Consumer Advocate for the State of South Carolina (the Consumer Advocate). A

Notice of Protest was filed by Mrs. Bessie Lee Green.

The Commission Staff (Staff) made on-site investigations of the Company's facilities, audited the Company's books and records, and gathered other detailed information concerning the Company's operations. The Consumer Advocate also conducted discovery relating to the Company's Application.

On December 12, 1991, a public hearing concerning the matters asserted in the Company's Application was held in the Commission's hearing room. Pursuant to S.C. Code Ann. §58-3-95 (Supp. 1991), a panel of three Commissioners, Vice Chairman Yonce, presiding, Commissioner Arthur, and Commissioner Mitchell, was designated to hear and rule on this matter. Louis H. Lang, Esquire, represented the Company; Carl F. McIntosh, Esquire, represented the Consumer Advocate; and Gayle B. Nichols, Staff Counsel, represented the Commission Staff.

Upon full consideration of the Company's Application, the evidence presented at the hearing, and the applicable law, the Commission makes the following findings of fact and conclusions of law:

**FINDINGS OF FACT**

1. Piney Grove provides water service to 123 customers in Graustark, Allbene Park, and Franklin Park Subdivisions and sewer service to 339 customers in Lloydwoods and Franklin Park Subdivisions in Lexington and Richland Counties, South Carolina.

2. Piney Grove was acquired from General Utilities, Inc. in 1985. Piney Grove's present rates and charges are those that were approved for

General Utilities, Inc. between 1970 and 1973.<sup>1</sup> Currently, Piney Grove charges a monthly minimum of \$4.00 for use of 133 cubic feet for water service to its Allbene Park and Graustark Subdivisions and a minimum of \$4.00 for use of 3,000 gallons of water to its customers in the Franklin Park Subdivision. Piney Grove charges a \$7.50 fee for disconnection or reconnection of its water service.

3. Piney Grove charges \$3.00 per month, or \$30.00 per year in advance, for sewer service to its customers in the Franklin Park Subdivision. The Company charges its customers in the Lloydwood Subdivision \$4.50 per month for sewer service.

4. Piney Grove proposes to charge its customers a monthly Basic Facility Charge of \$9.00 and a monthly Commodity Charge of \$3.50 per 1,000 gallons or 133 cubic feet for water service. This charge results in an increase of 402.43% on an average customer's monthly bill. In addition, Piney Grove proposes to increase its disconnect and reconnect charge for water service to \$35.00.

5. Piney Grove proposes to charge its customers a monthly charge of \$29.00 for sewer service. This charge results in an increase of 867.67% on an

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Specifically, the Company's water and sewer charges were approved by the following orders.

SUBDIVISION	ORDER NO.	DOCKET NO.	DATE
GRAUSTARK (WATER)	15,156	15,033	4-7-70
ALLBENE PARK (WATER)	15,157	15,034	4-7-70
FRANKLIN PARK (WATER)	15,176	15,066	4-21-70
FRANKLIN PARK (SEWER)	15,177	15,067	4-21-70
LLOYDWOOD (SEWER)	16,753	16,578	3-22-73

average Franklin Park Subdivision customer's monthly bill. This proposed charge results in an increase of 544.44% on an average Lloydwood Subdivision customer's monthly bill.

6. Piney Grove asserts that its requested increase in rates and charges are necessary and justified because it is currently losing money on its water and sewer operations. Specifically, Piney Grove notes that in 1990, it had a net operating loss of \$63,912 and in 1989 it had a net operating loss of \$73,597. Piney Grove claims that it is unlikely that it can continue its provision of water and sewer service without a satisfactory rate increase.

7. Piney Grove asserts that C.W. Haynes & Company, the developer of three of the subdivisions, manages the Company but does not collect a management fee. Piney Grove states that C.W. Haynes and Company and its shareholders have loaned the Company money in order to maintain its water and sewer operations.

8. Piney Grove proposes that the appropriate test year upon which to consider its requested increase is the twelve month period ending December 31, 1990.

9. Under its presently approved rates, the Company states that its per book operating revenues for the test year were \$27,562.<sup>2</sup> The Company seeks an increase in its rates and charges for water and sewer service in a manner which would increase its operating revenues by \$136,231.

10. Staff proposes to adjust the Company's per book revenues by \$389.

Unless otherwise stated, this Order will refer to the combined water and sewer revenues and expenses of the Company.

This adjustment reflects revenues which will be received based on the number of the Company's sewer customers at the end of the test year. Accordingly, after accounting and pro forma adjustments, Staff concluded that Piney Grove's operating revenues were \$27,951.

11. The Company asserts that under its presently approved rates, its operating expenses for the test year, after accounting and pro forma adjustments, were \$128,157. Staff concludes that the Company's operating expenses for the test year, after accounting and pro forma adjustments, were \$71,886. Staff made this proposal after making the following adjustments to the Company's expense accounts:

**(A) Management Fee**

The Company proposed to pay 5% of its revenues as a management fee to C.W. Haynes & Company. The Company explained that the proposed management fee would reimburse C.W. Haynes & Company for the expenses it incurs such as postage, bookkeeping, and salaries in managing Piney Grove. The Company admitted that the selection of a charge of 5% of its revenues was not based on any type of study of C.W. Haynes & Company's costs to perform services for Piney Grove.

Staff did not propose a management fee for Piney Grove. Staff accounting witness Scott testified that the Company had no documentation supporting its proposed management fee and that because the Company did not pay any management fees during the test year, there was no known and measurable information upon which to accept the Company's proposed adjustment.



**(B) Rate Case Expenses**

The Company estimated that its rate case expenses would be \$1,000 and, thereafter, proposed to recover the \$1,000 expense over a three year period. Staff amortized the Company's actual rate case expenses of \$1,771 over a three year period for an adjustment of \$590.

**(C) Capitalization of Plant**

Staff proposed to capitalize water pump controls, two water pumps, a chemical tie-in pump, and a sewer lift pump which were purchased and installed after the test year. This adjustment increased the Company's plant in service by \$9,597.

**(D) Depreciation Expense/Accumulated Depreciation**

The Staff proposed to adjust the Company's depreciation expense on the Company's plant to reflect straight-line depreciation rather than depreciation on an accelerated rate as recorded on the Company's books. The Staff's proposed depreciation rate was based on rates recommended by the Commission's Water and Wastewater Department. Staff's annualization reduced the Company's depreciation expense by \$7,658 and, likewise, its accumulated depreciation by \$7,658.

**(E) Interest Expense**

During the test year, the Company did not pay any interest expense. The Company proposes to recover \$21,858 in interest for loans made to Piney Grove by its shareholders and C. W. Haynes and Company, Inc. This interest expense was calculated by assuming the Company would repay its debt at an average interest rate of 10% over the next five years.

Staff proposes to synchronize the Company's interest expense with the debt portion of its rate base. Staff witness Scott testified that this method of calculating interest ensures that the interest expense is associated with rate base and is not interest associated with debt incurred to cover cash flow problems or to support non-utility related business activities.

12. The Company stated that, after accounting and pro forma adjustments to its operating revenues and operating expenses, its net income for return was (\$100,595). Staff found that, after accounting and pro forma adjustments to the Company's operating revenues and operating expenses, the Company's net income for return was (\$43,935).

13. After making its accounting and pro forma adjustments, Staff concluded that the Company's present operating margin is (181.35%).<sup>3</sup> Staff concludes that the Company's proposed increase in rates and charges would increase the Company's operating margin to 39.32%.

14. Ms. Green, a resident of Franklin Park, testified she received water and sewer service from Piney Grove. She testified that while she had not experienced any problem with the quality of water, her water supply was not reliable. Ms. Green testified that within the past year she had been without water on at least six occasions. Ms. Green explained that Franklin Park was a low income area and that its water service was not sufficiently reliable to justify an increase in the amount proposed by the Company.

15. Ms. Cooper, another resident of Franklin Park, testified that her

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The Company did not provide an operating margin.

water service had also been interrupted during the past year. She explained that while Piney Grove's rates were currently low, an increase should only be granted if the water service improved. Ms. Cooper testified she had no complaints with her sewer service.

CONCLUSIONS OF LAW

1. The Company is a water and sewer utility providing water and sewer service in its service area within South Carolina. The Company's operations in South Carolina are subject to the jurisdiction of the Commission pursuant to S. C. Code Ann. §58-5-10, et seq. (1976).

2. A fundamental principle of the ratemaking process is the establishment of a historical test year as the basis for calculating a utility's revenues and expenses and, consequently, the validity of the utility's requested rate increase. While the Commission considers a utility's proposed rate increase based upon occurrences within the test year, the Commission will also consider adjustments for any known and measurable out-of-test-year changes in expenses, revenues, and investments and will also consider adjustments for any unusual situations which occurred in the test year. See, Parker v. South Carolina Public Service Commission, 280 S.C. 310, 313 S.E.2d 290 (1984), citing City of Pittsburgh v. Pennsylvania Public Utility Commission, 187 Pa.Super. 341, 144 A.2d 648 (1958); Southern Bell v. The Public Service Commission, 270 S.C. 590, 244 S.E.2d 278 (1978).

In light of the fact that the Company proposes that the twelve-month period ending December 31, 1990, is the appropriate test year and Staff has audited the Company's books for that test year, the Commission concludes that

the twelve-month period ending December 31, 1990, is the appropriate test year for the purposes of this rate request.

3. The Commission concludes that the Company's operating revenues for the test year were \$27,951. In making this conclusion, the Commission has accepted Staff's proposal to adjust the Company's revenue to project its actual revenue based on its year-end customers. The Commission concludes this method of annualization is appropriate.

4. The Commission has considered each proposed adjustment to the Company's operating expenses as suggested by the Company, the Consumer Advocate, and Staff. The Commission approves or disapproves of each of the proposed adjustments as follows:

**(A) Management Fee**

The Commission concludes that, for the purposes of this ratemaking proceeding, the Company's proposed management fee should be denied. While it recognizes that the Company does not incur postage, rent, telephone, and other typical utility expenses because these expenses are absorbed by C.W. Haynes and Company, the Commission nonetheless concludes that there is no evidence in the record which supports the selection of a management fee of 5% of the Company's revenues. Accordingly, on the basis of the present record, the Commission concludes it would be inappropriate to allow the Company to recover a management fee from its ratepayers.

**(B) Rate Case Expenses**

The Commission accepts Staff's proposal to amortize the Company's known rate case expenses over a three year period. Accordingly, the Commission

adopts Staff's recommendation to allow Piney Grove to recover \$590 over three years.

**(C) Capitalization of Plant**

The Commission accepts Staff's proposal to include in plant items that were purchased and installed by the Company outside of the test year. The Company finds that these plant items are being used to benefit the ratepayers and, therefore, are properly recoverable. Hamm v. Southern Bell, \_\_S.C.\_\_, 394 S.E.2d 311 (1990), supra.

**(D) Depreciation Expense**

The Commission accepts Staff's proposal to depreciate the Company's plant on a straight-line basis at rates previously recommended by the Water and Wastewater Department for similar items. The Commission finds that without documentation supporting its proposed rates, the Company's accelerated depreciation rates are inappropriate.

**(E) Interest Expense**

The Commission adopts Staff's proposal to synchronize the Company's interest expense and its associated income tax savings to the debt portion of its rate base. The Commission finds that Staff's proposal equitably allocates interest expense and tax savings between the utility's shareholders and ratepayers as it insures that ratepayers will not pay for interest expense incurred for non-utility purposes.

**(F) Miscellaneous and Other Adjustments**

The Commission adopts all other pro forma and accounting adjustments proposed by Staff and not objected to by any party. All other adjustments

proposed by various parties not specifically addressed herein have been considered by the Commission and have been denied. The Commission has also adjusted all general, state, and federal taxes to reflect all other approved adjustments.

5. Based on the above determinations concerning the accounting and pro forma adjustments to the Company's revenues and expenses, the Commission concludes that Piney Grove's net income (loss) for return is as follows:

TABLE A  
NET INCOME FOR RETURN

BEFORE RATE INCREASE

Operating Revenues	\$27,951
Operating Expenses	<u>71,886</u>
Net Operating Income (Loss)	(\$43,935)
Customer Growth	<u>-0-</u>
Net Income (Loss) for Return	(\$43,935)

6. Under the guidelines established in the decisions of Bluefield Water Works and Improvement Co. v. Public Service Commission of West Virginia, 262 U.S. 679 (1923), and Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591 (1944), this Commission does not ensure through regulation that a utility will produce net revenues. As the United States Supreme Court noted in Hope, a utility "has no constitutional rights to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures." However, employing fair and enlightened judgment and giving consideration to all relevant facts, the Commission should establish rates which will produce revenues "sufficient to assure confidence in the financial soundness of the utility and . . . that are adequate under efficient and

economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties."

Bluefield, supra, at 692-693.

7. There is no statutory authority prescribing the method which this Commission must utilize to determine the lawfulness of the rates of a public utility. For a water and sewer utility whose rate base has been substantially reduced by customer donations, tap fees, contributions in aid of construction, and book value in excess of investment, the Commission may decide to use the "operating ratio" and/or "operating margin" method for determining just and reasonable rates. The operating ratio is the percentage obtained by dividing total operating expenses by operating revenues; the operating margin is determined by dividing the net operating income for return by the total operating revenues of the utility. This method was recognized as an acceptable guide for ratemaking purposes in Patton, supra.

The Commission concludes that use of the operating margin is appropriate in this case. Based on the Company's gross revenues for the test year, after accounting and pro forma adjustments under the presently approved schedules, the Company's operating expenses for the test year, after accounting and pro forma adjustments, and customer growth, the Company's present operating margin (loss) is as follows:

TABLE B  
OPERATING MARGIN

BEFORE RATE INCREASE

Operating Revenues	\$27,951
Operating Expenses	<u>71,886</u>
Net Operating Income (Loss)	(\$43,935)
Customer Growth	<u>-0-</u>
Total Income for Return	(\$43,935)
Operating Margin	
(Loss) (After Interest)	(181.35%)

8. The Commission is mindful of the standards delineated in the Bluefield decision and of the need to balance the respective interests of the Company and of the consumer. It is incumbent upon this Commission to consider not only the revenue requirements of the Company but also the proposed price for the water and sewer service, the quality of the water and sewer service, and the effect of the proposed rates upon the consumer. See, Seabrook Island Property Owners Ass. v. S. C. Public Service Commission, \_\_S.C.\_\_, 401 S.E.2d 672 (1991); S.C. Code Ann. §58-5-290 (1976).

9. The fundamental criteria of a sound rate structure have been characterized as follows:

...(a) the revenue-requirement or financial-need objective, which takes the form of a fair return standard with respect to private utility companies; (b) the fair-cost apportionment objective which invokes the principle that the burden of meeting total revenue requirements must be distributed fairly among the beneficiaries of the service; and (c) the optimum-use or consumer rationing under which the rates are designed to discourage the wasteful use of public utility services while promoting all use that is economically justified in view of the relationships between costs incurred and benefits received.

Bonbright, Principles of Public Utility Rates (1961), p. 292.



10. Based on the considerations enunciated in Bluefield and Seabrook Island and on the fundamental criteria of a sound rate structure as stated in Principles of Public Utility Rates, the Commission determines that the Company should have the opportunity to earn a 6.04% operating margin for the next year and an operating margin of 8.50% thereafter. In order to have a reasonable opportunity to earn a 6.04% operating margin in the next year and a 8.50% operating margin thereafter, the Company will need to produce \$85,534 in total annual operating revenues for the next year and \$88,474 in total annual operating revenues thereafter.

TABLE C  
OPERATING MARGIN

AFTER RATE INCREASE	<u>YEAR 1</u>	<u>SUCCEEDING YEARS</u>
Operating Revenues	85,534	88,474
Operating Expenses	<u>73,611</u>	<u>74,197</u>
Net Operating Income	11,923	14,277
Customer Growth	-0-	-0-
Total Income for Return	<u>11,923</u>	<u>14,277</u>
Operating Margin (After Interest)	6.04%	8.50%

11. The Commission has carefully considered the financial needs of the Company and the concerns of its customers. While the Commission recognizes that the Company is currently operating with a negative operating margin, the Commission also recognizes that there is customer dissatisfaction with the reliability of the Company's water service.

Further, the Commission recognizes that the Company's proposed \$9.00 monthly Basic Facility Charge and \$3.50 per 1,000 gallon usage charge would

increase an average residential customer's monthly water bill by 402.43%. Similarly, Piney Grove's proposal to increase its sewer rates from a flat rate of \$3.00 per month for customers in Franklin Park and \$4.50 per month for customers in Lloydwood to \$29.00 per month would increase a Franklin Park customer's sewer bill by 867.67% per month and a Lloydwood customer's sewer bill by \$544.44% per month.

12. On the other hand, the Commission recognizes that the Company's rates have not been increased since the inception of the water and sewer systems in the early 1970s. The Commission is cognizant of the fact that basic expenses have increased with time. Moreover, the Commission notes that since 1985 the Company has made \$189,111 worth of capital improvements to its water and sewer facilities which directly benefit its current ratepayers.

13. The Commission concludes that an increase in the Company's water and sewer rates is necessary. However, the Commission finds that Company's proposed increase is inappropriate. Accordingly, for water service the Commission will allow the Company to charge a Basic Facility Charge of \$6.00 per month and a usage charge of \$2.00 per 1,000 gallons. The Commission approves the Company's proposed \$35.00 disconnection and reconnection fee as reasonable. 26 S. C. Regs. Ann. 103-732.5 (Supp. 1991).

14. For one year from the date of this Order the Commission approves a flat rate of \$10.00 per month for sewer service for customers in the Franklin Park Subdivision. Thereafter, the Commission approves a flat rate of \$15.00 per month for customers in the Franklin Park Subdivision. The Commission approves a flat rate of \$15.00 per month for sewer service for customers in the

Lloydwood Subdivision. Finally, the Commission approves late payment fees and a sewer reconnection fee in keeping with 26 S.C. Regs. 103-532.2 and 103-532.4 (Supp. 1991).

15. Based on the above considerations and reasoning, the Commission hereby approves the proposed rates and charges as stated in this Order as a just and reasonable manner in which to produce and distribute the increased revenues which are necessary to provide Piney Grove with the opportunity to earn its approved operating margins.

16. Accordingly, it is ordered that the rates and charges attached on Appendix A are approved for service rendered on or after the date of this Order. The schedule is hereby deemed to be filed with the Commission pursuant to S.C. Code Ann. §58-5-240 (1976).

17. It is ordered that if the approved schedule is not placed in effect until three (3) months after the effective date of this Order, the approved schedule shall not be charged without written permission of the Commission.

18. It is further ordered that the Company maintain its books and records for water and sewer operations in accordance with the NARUC Uniform System of Accounts for Class C Water and Sewer Utilities, as adopted by this Commission.

19. Finally, the Commission recognizes that Piney Grove has been attempting to sell its water and sewer systems. The Commission encourages Piney Grove to continue in this effort.

DOCKET NO. 90-807-W/S - ORDER NO. 92-29  
JANUARY 24, 1992  
PAGE 17

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20. This Order shall remain in full force and effect until further  
Order of the Commission.

BY ORDER OF THE COMMISSION:

Chairman

ATTEST:

Executive Director

(SEAL)

## EXHIBIT F

STATE OF SOUTH CAROLINA  
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL  
EMERGENCY ORDER

05-040-W

WHEREAS the South Carolina Department of Health and Environmental Control (DHEC) is an agency of the State authorized and directed to implement the provisions of the Federal Clean Water Act, 33 U.S.C. §§1251 *et seq.*; the S.C. Pollution Control Act, S.C. Code of Laws § 48-1-10 to -350 (1987 and Supp. 2004); S.C. Code of Laws § 44-1-140, and S.C. Code of Laws, Regulations 61-46, 61-56 and 61-9; and

WHEREAS DHEC is authorized to make separate orders to meet any emergency not provided for by general rules and regulations, for the purpose of suppressing nuisances dangerous to the public health. See S.C. Code of Laws § 44-1-140; and S.C. Code of Laws, Regulation 61-46; and

WHEREAS Pincy Grove Utilities, Inc. (PGU), 49 Archdale Street, Charleston, South Carolina 29401, owns and operates a wastewater treatment facility (WWTF) and wastewater collection system (WWCS) serving the residences in the Lloydwood Subdivision, located in Lexington County, South Carolina; and

WHEREAS DHEC issued NPDES Permit SC0031402, effective May 1, 1994, authorizing the Respondent to discharge treated wastewater into an unnamed tributary to Dry Creek, in accordance with the effluent limitations, monitoring requirements and other conditions as set forth therein; and

WHEREAS Pincy Grove Utilities, Inc., entered into Consent Order of Dismissal 04-007-W with the Department thereby agreeing to properly operate and maintain its WWTF and its WWCS, in accordance with all applicable State and Federal regulations; and

WHEREAS numerous complaints during the time period of April 2, 2003 to date, were received by the SCDHEC Central Midlands Environmental Quality Control District Office, alleging that wastewater was running onto the ground near residences, and into storm drains throughout the Lloydwood Subdivision; and offensive odors were present throughout an adjoining neighborhood and were originating from the WWTF; and

WHEREAS a DHEC staff member substantiated each complaint, finding that malfunctions of the WWCS resulted in the reported overflows of sewage onto the ground and into the storm drainage system. The DHEC staff member contacted PGU by telephone to give it notice of the findings; and

WHEREAS on April 2, 2003, DHEC received a complaint about bad odors coming from the PGU's WWTF. Department staff noted that the polishing pond water had less than one (1.0) milligram per liter (mg/l) of Dissolved Oxygen (DO) and that there was a very heavy cover of

duckweed over the pond, both causing the pond water to go septic and release an offensive odor; and

**WHEREAS** on April 23, 2003, in response to a resident's complaint, DHEC personnel witnessed waste solids around a cleanout and standing water in and around the cleanout at 313 Hadley Hall Road. The manhole below 313 Hadley Hall Road was flowing and did not appear to have been backed up. The DHEC inspector could not locate the manhole above 313 Hadley Hall Road. The complainant stated that a plumber had been to 313 Hadley Hall Road five (5) times to try to fix the problem, but that the problem was in the main line. PGU claimed that it was the homeowner's problem. The complainant said that after the main line was jet-rodded, the problem seemed to be resolved and would call back if the problem reoccurred; and

**WHEREAS** on April 28, 2003, the complainant called to report sewage backing up again at 313 Hadley Hall Road and that other community members were experiencing problems also; and

**WHEREAS** on May 1, 2003, DHEC notified PGU that it had received several complaints concerning sewer back ups into the complainant's home on Hadley Hall Road. The complainant called PGU many times without PGU returning the calls. The complainant had to hire a plumber who told them that the sewer back up was PGU's responsibility due to a tap not functioning properly. DHEC had to request that PGU either repair or replace the tap and clean up the raw sewage in the area. The main line tap was replaced by PGU by May 13, 2003; and

**WHEREAS** on September 12, 2003, there was a sewer back up into a home at 18 Mayligh Court. The homeowner had to hire a plumber to find out that it was due to a blockage in a manhole; and

**WHEREAS** on January 13, 2004, DHEC personnel observed a manhole overflowing at 335 Creighton Drive and the raw sewage was flowing into a storm drain located at 337 Creighton Drive. As of February 18, 2004, DHEC had not received a Sanitary Sewer Overflow (SSO) report on this incident; and

**WHEREAS** on January 20, 2004, a cleanout overflowed at 414 Old Plantation Drive and, after three (3) other similar complaints, PGU said that the sewer line would be looked at with a video camera to see what might be the problem; and

**WHEREAS** on January 26, 2004, another overflow occurred from a cleanout at 414 Old Plantation Drive. PGU had video taped the lines and knew that the sewer lines were running slow because of grease and roots in the lines. The complainants had to clean up the raw sewage in their yards; and

**WHEREAS** on February 4, 2004, a Facility Evaluation Inspection (FEI) was performed by DHEC staff and an unsatisfactory rating was assigned. DHEC requested a written response within fifteen (15) days of receipt; no response was ever received. The following deficiencies were noted: a) the heavy mat of duckweed was causing odors that had become much worse; b)

vegetation around the lagoon was extremely high and must be cut; c) there was no electric fan with a vent installed in the chlorine room and the wiring appeared to be in need of repair; d) the free board of the ponds was eroding and the vegetation was heavy; and e) tree limbs were hanging over the pump station and there was vegetation on the fence line and large broken tree limbs are partially hanging over the driveway and is a safety hazard; and

**WHEREAS** on February 10, 2004, a complainant called about a sewer overflow in the front yard of 414 Old Plantation Drive, coming from a cleanout. A plumber, called by the complainant, stated that the problem was due to a blockage at the main line tap; and

**WHEREAS** on February 11, 2004, a complainant called to report a sewage overflow from the cleanout in the front yard of 17 Mayligh Court; and

**WHEREAS** on April 8, 2004, a complainant called to report that a bad odor was coming from a fenced field that is located beside 425 Ravencroft Road. The complainant stated that the field was covered with raw sewage sometimes as deep as one (1) foot. The complainant also noticed children playing in this field of sewage on numerous occasions; and

**WHEREAS** on April 29, 2004, DHEC conducted a FEL. The facility received an Unsatisfactory rating due to the following deficiencies: duckweed on the polishing pond completely covered the surface, there was a high buildup of solids in the lagoon, vegetation around the lagoon was extremely high and must be cut, downed trees are a danger and must be removed, and the free board of the ponds were eroding and must be repaired; and

**WHEREAS** on August 20, 2004, DHEC received a complaint about distinct sewer odors coming from a drainpipe that carries effluent from the sewage lagoon to a stream. A fecal coliform bacteria sample was collected by DHEC staff, at the end of the storm drainpipe before it mixes with the stream. The analytical results of the sample was 3000 colonies per 100 milliliters of water, indicating the presence of sewage; and

**WHEREAS** on September 2, 2004, a complainant reported sewage on the road, by their home, for two (2) days. The complainant tried calling PGU, but was unsuccessful. The sewage ran down the street and into a storm drain. Sewage was still standing in the road on September 3, 2004; and

**WHEREAS** on September 10, 2004, a complainant said that there was sewage coming from a manhole on Creighton Drive. The sewage was running down Creighton Drive onto Ravenscroft Road and onto South Hall Road and entering a storm drain on South Hall Road. PGU was called by the DHEC and told of the problem. On September 13, 2004, the problem had been fixed and although the manhole and storm drain were lined, other areas were not; and

**WHEREAS** on November 19, 2004, a complainant called regarding sewage coming from a cleanout at 304 Cooksmount Road and from another cleanout on the property line. A plumber, hired by the complainant, said that the problem was at the PGU's tap or in the main line. DHEC

contacted PGU and his attorney in order to get the problem corrected; and

**WHEREAS** on December 27, 2004, a complainant called regarding a sewage overflow at 310 Cooksmount Road, and that PGU was not responding to their calls. The complainant's plumber said that the problem was the responsibility of PGU since there was a blockage in the manhole downstream from the complainant's service connection; and

**WHEREAS** on December 28, 2004, a complainant called to report a manhole overflowing in front of 336 South Hall Drive; they also stated it had been overflowing for about a week. DHEC called PGU in the morning of December 28, 2004, about the overflow and PGU assured DHEC that they had someone working on the problem. On December 29, 2004, DHEC returned to find that the sewer was still overflowing. PGU was called again. On December 30, 2004, the line was repaired and lime was applied around the manhole, but there was no lime or cleanup along the street or in the storm drain; and

**WHEREAS** on February 28, 2005, a complaint was received from 17 Mayligh Court about sewage coming from a cleanout. When DHEC staff arrived at the above address, they saw that the sewage had been cleaned up by Gene Love Plumbing. DHEC staff looked into the manhole where the line coming from 17 Mayligh Court enters the mainline, and the manhole had water standing in the bottom. They then looked in the manhole down the road where the Mayligh Court line hits the mainline and the water was barely trickling from the Mayligh Court line; and

**WHEREAS** as of March 1, 2005, PGU was operating the facility without a S.C. Certified operator of the appropriate grade, as required by the NPDES Permit; did not have a S.C. approved laboratory to analyze all permitted requirements; and, had not submitted its monthly discharge monitoring reports (DMR) for December 2004, January 2005 and February 2005. Also, there is no chlorine at the facility, which is required for the disinfection of the WWTF's effluent; and

**WHEREAS** on April 7, 2005, DHEC staff performed a FEI of the WWTF. The WWTF was rated unsatisfactory because DHEC staff was denied entry. DHEC staff collected a fecal coliform bacteria sample from the receiving stream immediately after the discharge. Sample results indicate fecal coliform bacteria level of thirty thousand (30,000) colonies per one hundred (100) milliliters of sample. Fecal coliform bacteria counts of this level indicate the presence of untreated wastewater in the receiving stream; and

**WHEREAS** it is the responsibility of PGU to properly operate and maintain the waste disposal system and the effluent discharge limits for fecal coliform bacteria of two hundred (200) colonies per one hundred (100) milliliters monthly average and four hundred (400) colonies per one hundred (100) milliliters daily maximum; and

**WHEREAS** upon information and belief, the residences at Lloydwood Subdivision are occupied for more than two (2) hours per day and are therefore required by R.61-56 to have approved



facilities for treatment and disposal of sewage; and

**WHEREAS** inspections by DHEC staff reveal that the nature and amount of spillage of waste water, over the past two (2) years, has created a nuisance and health hazard for residents of Lloydwood Subdivision, the adjacent property, which is another subdivision not serviced by the WWTF, and for children who may come in contact with such waste through play in and about the area; and

**WHEREAS** DHEC finds that flow of wastewater on and about Lloydwood Subdivision, the receiving stream and into the storm drainage system represents an immediate threat to the health and welfare of the residences of both the Lloydwood Subdivision and adjacent subdivisions in immediate vicinity of the Lloydwood Subdivision and to occupants therein; and

**WHEREAS** Lloydwood Subdivision is supplied with potable water by a public water system operated by the City of Cayce; and

**WHEREAS** "whatever is dangerous to human health, whatever renders the ground, air, or food a hazard or injury to human health, and the following acts, conditions, and things, whenever, in the opinion of the local health director they are dangerous to the public health, are each and all of them hereby declared to constitute a public health nuisance: (g) The discharge of sewage, garbage, or any other organic filth into or upon any place in such a manner that transmission of infective material to human beings may result therefrom." S.C. Code of Laws Regs. 61-46, Section 1(g) (1976); and

**WHEREAS** "Each dwelling unit, building, business or other structure occupied for more than two (2) hours per day shall be provided with approved facilities for the treatment and disposal of sewage." S.C. Code of Laws Regs. 61-56, Section III(A) (1976); and


**WHEREAS** "It shall be unlawful for any person, directly or indirectly, to throw, drain, run, allow to seep or otherwise discharge into the environment of the State organic or inorganic matter, including sewage . . . except as in compliance with a permit issued by the Department." S.C. Code of Laws § 48-1-90(a); and

**WHEREAS** "the Department may make separate orders and rules to meet any emergency not provided for by general rules and regulations, for the purpose of suppressing nuisances dangerous to the public health and communicable, contagious and infectious diseases and other danger to the public life and health." S.C. Code of Laws § 44-1-140 (2002); and

**NOW THEREFORE IT IS ORDERED** that pursuant to SC Code §44-1-140, 48-1-110 and R.61-56 and 61-9, Piney Grove Utilities, Inc. shall immediately hire a South Carolina certified operator of appropriate grade, which in this case is an operator with a grade of C; immediately begin and continue to properly operate and maintain its WWTF and WWCS in accordance with National Pollutant Discharge Elimination System (NPDES) Permit and all applicable State and Federal regulations.

**AND IT IS SO ORDERED.**

4-14 - 2005  
Columbia, SC

  
C. Earl Hunter  
Commissioner

**PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA**

**DOCKETING DEPARTMENT**

**NOTICE OF HEARING**

**DOCKET NO. 2004-112-S**

Piney Grove Utilities, Inc. – Application Requesting Approval of a Pending Contract with the City of Cayce for Bulk Service Collection from the Lloydwood Sewage Collection Facility located in Lexington County, South Carolina.

**PLEASE TAKE NOTICE** that a hearing on the above matter has been scheduled to begin at **10:30 a.m. on Thursday, June 30, 2005** before the Commission in the Commission's Hearing Room, Synergy Business Park, 101 Executive Center Drive, Saluda Building, Columbia, South Carolina.

Persons seeking information about the Commission's Procedures should contact the Commission at 803-896-5100.

Public Service Commission of South Carolina  
Attn: Docketing Department  
PO Drawer 11649  
Columbia, SC 29211

03-04-05

**THE STATE OF SOUTH CAROLINA  
BEFORE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**

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**IN RE: PINEY GROVE UTILITIES, INC.  
LLOYDWOOD SUBDIVISION  
LEXINGTON COUNTY**

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**CONSENT ORDER  
04-007-W**

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Piney Grove Utilities, Inc. (Respondent) owns and is responsible for the proper operation and maintenance of a wastewater treatment facility (WWTF) serving Lloydwood Subdivision located in Lexington County, South Carolina.

The Respondent violated the Pollution Control Act, S.C. Code Ann. §§ 48-1-10 et seq. (1987 and Supp. 2003) and National Pollutant Discharge Elimination System (NPDES) Permit SC0031402 in that it exceeded the permitted discharge limits for ammonia-nitrogen (NH<sub>3</sub>-N), biochemical oxygen demand (BOD), dissolved oxygen (DO), fecal coliform bacteria and flow, and failed to at all times properly operate and maintain the WWTF in accordance with the NPDES permit. The Respondent also failed to provide for daily visits to the WWTF by an operator of appropriate grade and failed to monitor pH and DO on a daily basis as required by the NPDES permit.

In accordance with approved procedures and based on discussions with the Respondent's agent, the parties have agreed to the issuance of this Order to include the following Findings of Fact and Conclusions of Law.

## **FINDINGS OF FACT**

1. The Department issued NPDES permit SC0031402 authorizing the Respondent to discharge treated wastewater to an unnamed tributary to Dry Creek in accordance with the effluent limitations, monitoring requirements and other conditions set forth therein.
2. The WWTF has been identified through the 201/208 planning process for elimination by connection to a regional sewer system. The NPDES permit prescribes a schedule of compliance, which requires the Respondent to connect to a regional sewer system and cease discharging within ninety (90) days of notification by the Department that a regional sewer system is available.
3. The Respondent's WWTF was rated noncompliant due to violations of the permitted discharge limits for NH<sub>3</sub>-N during a Department Compliance Sampling Inspection (CSI) performed on April 17, 2000.
4. The Respondent's WWTF was rated noncompliant due to violations of the permitted discharge limits for NH<sub>3</sub>-N, BOD and fecal coliform bacteria during a Department CSI performed on September 18, 2000.
5. On August 16, 2001, the Department received a complaint of strong sewage odors from a resident of the subdivision served by the Respondent's WWTF.
6. On August 17, 2001, Department personnel performed an Operation and Maintenance (O&M) Inspection at the Respondent's WWTF. The Respondent's WWTF received an unsatisfactory rating due to the following deficiencies: 1) The polishing pond was completely covered in duckweed; 2) The WWTF was only being sampled five (5) days per week instead of the required seven (7) days per week; 3) A sign with an emergency phone

number was not posted on the gate; 4) The vegetation was not being maintained; and 5) The pond dikes were eroding.

7. On August 27, 2001, the Department received a complaint of extremely strong sewage odors from a resident of the subdivision served by the Respondent's WWTF.
8. Department personnel again visited the WWTF on August 29, 2001, and confirmed that an odor was present. A sample collected from the polishing pond and analyzed revealed a dissolved oxygen (DO) level of 0.97 milligrams per liter.
9. In a letter to the Respondent dated August 31, 2001, the Department informed the Respondent of the odor complaints and the deficiencies noted during the August 17, 2001, O&M Inspection, as well as the DO level detected on August 29, 2001. The Department advised the Respondent to remove the duckweed from the polishing pond as a measure of odor control. The Respondent was requested to begin removing the duckweed immediately upon receipt of the letter, and to submit to the Department a letter addressing the status of the duckweed removal within ten (10) days of receipt of the letter.
10. On January 10, 2002, Department personnel performed a Compliance Evaluation Inspection (CEI) at the Respondent's WWTF. The Respondent's operator of record was present during the CEI. The Respondent's WWTF received an unsatisfactory rating due to the following deficiencies: 1) A back-flow prevention device was not installed; 2) Analyses for DO and pH were only performed five (5) days per week instead of the required seven (7) days per week; 3) The pump station alarm system was not operational; and 4) The Respondent did not perform maintenance activities to the site, such as pumping out the effluent weir box and maintaining the access road.

11. On January 15, 2002, the Department received a complaint of strong sewage odors from a resident of the subdivision served by the Respondent's WWTF. Department personnel visited the WWTF on the same day and confirmed the presence of odors and complete cover of duckweed on the polishing pond.

12. On April 1, 2002, the Department received a complaint of strong sewage odors from a resident of the subdivision served by the Respondent's WWTF.

13. A review of discharge monitoring reports submitted by the Respondent for the March 1, 2000, through June 30, 2002, monitoring periods has revealed the following violations of the permitted discharge limits:

NH<sub>3</sub>-N - March, April, May, June, July, September, October, November and December 2000, January, February, March, April, May, June, July, August, September, October, November and December 2001, January, February, March, April, May and June 2002;

BOD - August, September, October and November 2000, August and September 2001, April and June 2002;

DO - March 2001; and

Flow - March and May 2000, and March 2001.

14. A regional sewer system owned by the City of Cayce is now available for connection.

15. The Respondent claimed a financial hardship and an inability to pay a civil penalty commensurate with the alleged violations and in the amount assessed by the Department. A request was made for relief. The Department accepted financial records, which are believed to accurately reflect the current financial position of the Respondent. Based upon a complete review of this information, the Department agrees to adjust the civil penalty amount as set forth below.

## CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the Department reaches the following Conclusions of Law:

1. The Respondent violated the Pollution Control Act, S.C. Code Ann. § 48-1-110 (d) (Supp. 2003), and Water Pollution Control Permits, 24 S.C. Code Ann. Regs. 61-9.122.41(a)(1) (Supp. 2003), in that it failed to comply with the permitted discharge limits for NH<sub>3</sub>-N, BOD, DO, fecal coliform bacteria, and flow as specified in Part I.A.1 of the NPDES permit.
2. The Respondent violated the Pollution Control Act, S.C. Code Ann. § 48-1-110(d) (Supp. 2003), and Water Pollution Control Permits, 24 S.C. Code Ann. 61-9.122.41(a) (Supp. 2003), in that it failed to provide for daily visits by an operator of appropriate grade and failed to monitor pH and DO on a daily basis as required by the NPDES permit.
3. The Respondent violated the Pollution Control Act, S.C. Code Ann. § 48-1-110(d) (Supp. 2003), and Water Pollution Control Permits, 24 S.C. Code Ann. 61-9.122.41(e) (Supp. 2003), in that it failed to at all times properly operate and maintain the WWTF in accordance with the NPDES permit.
4. The Pollution Control Act, S.C. Code Ann. § 48-1-330 (1987), provides for a civil penalty not to exceed ten thousand dollars (\$10,000.00) per day of violation for any person violating the Act or any rule, regulation, permit, permit condition, final determination, or Order of the Department.



NOW, THEREFORE, IT IS ORDERED, pursuant to Pollution Control Act, S.C. Code Ann. § 48-1-50 (1987) and § 48-1-100 (Supp. 2003), that the Respondent shall:

1. Henceforth, comply with all permitting and operating requirements in accordance with State and Federal regulations.
2. Within sixty (60) days of the execution date of this Order, submit to the PSC for approval a contract for sewer service with the regional sewer provider.
3. If the contract is approved by the PSC:
  - a) Within thirty days (30) after the PSC approves the contract, submit to the Department plans and specifications and an application for a permit to construct addressing elimination of the discharge by connection to regional sewer, including a closure plan.
  - b) Within ten (10) months of the execution date of this Order, begin construction on the connection to regional sewer.
  - c) Within fourteen (14) months of the execution date of this Order, complete construction of the connection to regional sewer and eliminate the discharge.
  - d) Within six (6) months of elimination of the discharge, close out the WWTF in accordance with Water Pollution Control Permits, 25 S.C. Code Ann. Regs. 61-9.503 (Supp. 2001), Proper Closeout of Wastewater Treatment Facilities, S.C. Code Ann. Regs. 61-82 (1976), and Standards for Wastewater Facility Construction S.C. Code Ann. Regs. 61-67 (as published in the State Register on May 24, 2002).
4. If the PSC denies the contract:
  - a) Within two (2) months of the PSC's denial of the contract, submit to the Department

plans and specifications and an application for a permit to construct addressing upgrade of the WWTF to meet permitted discharge limits.

- b) Within five (5) months of the PSC's denial of the contract begin construction of the permitted upgrade to the WWTF.
  - c) Within eleven (11) months of the PSC's denial of the contract, complete construction of the upgrade to the WWTF and request final operational approval from the Department.
5. If the regional sewer provider refuses to provide a contract to the Respondent within sixty (60) days from the date of this Order, the Respondent will upgrade the plant to meet permitted discharge limits in accordance with the following schedule:
- a) Within four (4) months of the date of this Order, submit to the Department plans and specifications and an application for a permit to construct addressing upgrade of the WWTF to meet permitted discharge limits.
  - b) Within seven (7) months of the date of this Order begin construction of the permitted upgrade to the WWTF.
  - c) Within thirteen (13) months of the date of this Order, complete construction of the upgrade to the WWTF and request final operational approval from the Department.

**IT IS FURTHER ORDERED AND AGREED** that the Department has assessed a civil penalty in the amount of thirty-one thousand twenty-four dollars (\$31,024.00). The Department suspends the entire penalty, provided, however, that this suspension shall be vacated and the full amount of thirty-one thousand twenty-four dollars (\$31,024.00) shall be due and payable upon notification by the Department should the Respondent fail to meet the requirements of the Order. The Department's

determination that the requirements have not been met shall be final. Further, a violation of the terms of this Order shall be deemed a violation of the South Carolina Pollution Control Act and shall be deemed unlawful, and may subject the Respondent to further enforcement action.

**THEREFORE IT IS FURTHER ORDERED** that if any event occurs which causes or may cause a delay in meeting any of the above scheduled dates for completion of any specified activity, the Respondent shall notify the Department in writing at least one (1) week before the scheduled date, describing in detail the anticipated length of the delay, the precise cause or causes of delay, if ascertainable, the measures taken or to be taken to prevent or minimize the delay, and the timetable by which those measures will be implemented.

The Department shall provide written notice as soon as practicable that a specified extension of time has been granted or that no extension has been granted. An extension shall be granted for any scheduled activity delayed by an event of *force majeure*, which shall mean any event arising from causes beyond the control of the Respondent that causes a delay in or prevents the performance of any of the conditions under this Order including, but not limited to: a) acts of God, fire, war, insurrection, civil disturbance, explosion; b) adverse weather condition that could not be reasonably anticipated causing unusual delay in transportation and/or field work activities; c) restraint by court order or order of public authority; d) inability to obtain, after exercise of reasonable diligence and timely submittal of all applicable applications, any necessary authorizations, approvals, permits, or licenses due to action or inaction of any governmental agency or authority; and e) delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence by the Respondent.

Events which are not *force majeure* include by example, but are not limited to, unanticipated

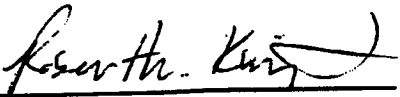
or increased costs of performance, changed economic circumstances, normal precipitation events, or any person's failure to exercise due diligence in obtaining governmental permits or fulfilling contractual duties. Such determination will be made in the sole discretion of the Department. Any extension shall be incorporated by reference as an enforceable part of this Order and thereafter be referred to as an attachment to the Order.

**PURSUANT TO THIS ORDER**, all communication regarding this Order and its requirements shall be addressed as follows:

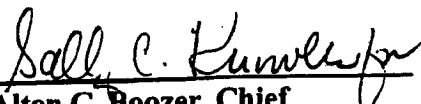
Anastasia Hunter-Shaw  
Water Enforcement Division  
Bureau of Water  
SCDHEC  
2600 Bull Street  
Columbia, S.C. 29201

**IT IS FURTHER ORDERED** that failure to comply with any provision of this Order shall be grounds for further enforcement action pursuant to the Pollution Control Act, S.C. Code Ann. § 48-1-330 (1987), to include the assessment of civil penalties.

**THE SOUTH CAROLINA DEPARTMENT OF  
HEALTH AND ENVIRONMENTAL CONTROL**

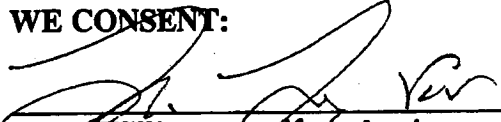
  
Robert W. King, Jr., P.E.  
Deputy Commissioner for  
Environmental Quality Control

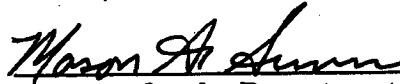
DATE: 3/26/04

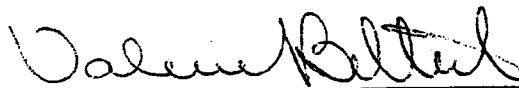
  
Alton C. Boozer, Chief  
Bureau of Water

DATE: March 19, 2004

WE CONSENT:

  
Reece Williams, *President of*  
Piney Grove Utilities, Inc.,  
*by express authority*

  
Mason A. Sumner  
Attorney for the Department

  
Valerie A. Betterton, Director  
Water Enforcement Division

DATE: 18 Feb 04

DATE: 3-19-04

DATE: 3-18-04